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Appl. No.	:	**10/706,300**
Filed	:	**November 12, 2003**

REMARKS

By way of summary, Claims 1–45 were pending in this application. By this amendment, Claim 1 is amended and Claims 19–45 have been cancelled. These amendments are made without prejudice or disclaimer, and Applicants respectfully reserve the right to pursue the same or similar claims in a continuation application. In the Office Action dated June 12, 2006, the Examiner noted a provisional election of Claims 1–18 made during a telephone conversation on May 30, 2005, and withdrew Claims 19–45. Applicants hereby affirm the election of Claims 1–18 without traverse. Accordingly, Claims 1–18 are currently pending in this application.

102 Rejections

Claims 1, 2, 4, 5, 9, 10, and 12–18 were rejected in the Office Action as being anticipated by U.S. Publication No. 2005/0119737 to Bene et al. Applicants respectfully traverse this rejection at least because the cited reference does not disclose all the recitations of the rejected claims.

Bene discloses an ocular implant device that is insertable into the eye to drain aqueous humor and/or to introduce medications. As taught by Bene, the implant includes a cylindrical body with a channel member that regulates the flow rate of aqueous humor from the anterior chamber. The implant operates "to reduce intraocular pressure (IOP) in the eye by shunting aqueous humor fluid from the anterior chamber of the eye *through the cornea*, and to the terafilum." Para. [0030]. The publication proceeds to explain how this is accomplished: "To do so, the shunt *must be* implanted through a small incision and into the cornea of the eye, actually *extending between the inner and outer surface of the cornea*." Para. [0030]. The specification also teaches that the implant is "approximately one millimeter long with an outer diameter of approximately 0.5 mm." Para. [0031]. One embodiment of the Bene implant is depicted in the figure reproduced here with reference number 222 identifying the implant.

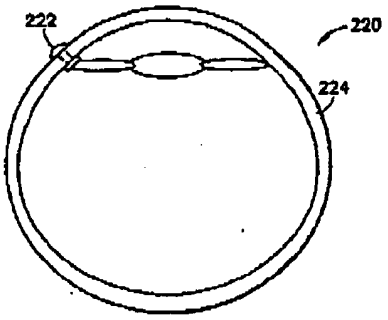

FIG.16

Applicants respectfully submit that Bene does not teach or suggest all the recitations now set forth in the claims. For example, Claim 1 now recites, in part, the "inlet portion configured to reside in the anterior chamber of an eye when the outlet portion is disposed in Schlemm's canal

of the eye," and the "outlet portion having an outflow opening such that said body transports fluid from the anterior chamber to Schlemm's canal." Additionally, Claim 4 recites, in part, "said inlet portion configured to transmit fluid from the anterior chamber to the outlet portion when the outlet portion is disposed in Schlemm's canal." Bene discloses an implant extending between the anterior chamber and the exterior of the eye, but Bene does not disclose, teach, or suggest an implant that has an inlet portion configured to reside in the anterior chamber of an eye when the outlet portion is disposed in Schlemm's canal. Indeed, the Bene implant is much too large to even fit within Schlemm's canal, as Bene teaches an implant having an outer diameter of "approximately 0.5mm," which is roughly twice the length of the greatest dimension of Schlemm's canal. Applicants respectfully submit that the claims require an implant with an outlet portion sized to be disposed within Schlemm's canal to conduct fluid into Schlemm's canal. The outlet portion of Bene cannot be disposed within Schlemm's canal because of the recited structural dimensions, and consequently, the Bene implant cannot transmit or transport fluid between the anterior chamber and Schlemm's canal.

Moreover, Bene teaches the creation of a new, artificial drainage system of the eye, in which the aqueous humor is drained from the anterior chamber to the exterior of the eye through an unnatural channel created by an implant extending through the cornea or sclera. Bene never discloses, teaches, or suggests that existing pathways can be restored by transmitting or transporting fluid from the anterior chamber to Schlemm's canal. Bene also fails to disclose, teach or suggest that drugs or bioactive agents may be used in applications in which the interior of the eye is not exposed to the exterior of the eye.

Applicants respectfully submit that Bene does not anticipate Claims 1 and 4 at least for the reasons set forth above and that Claims 1 and 4 are patentable over Bene. Additionally, Applicants also respectfully submit that Claims 2, 5, 9, 10, and 12–18, which depend from Claims 1 and 4, are patentable for at least the same reasons set forth above with respect to Claims 1 and 4 in addition to the patentable subject matter recited in each of the dependent claims. Accordingly, Applicants respectfully request withdrawal of the § 102 rejections of Claims 1, 2, 4, 5, 9, 10, and 12–18.

103 Rejections

Claims 3, 6–8, and 11 were rejected in the Office Action as being unpatentable over Bene in view of U.S. Patent No. 7,033,603 to Nelson. Applicants respectfully traverse this rejection at least because the cited references, alone or in combination, do not disclose all the recitations of the rejected claims.

Nelson relates to the composition of a gel or hydrogel loaded biodegradable fiber and methods of fabricating such fibers. Claims 3, 6–8, and 11 depend from both Claims 1 and 4, and Applicants respectfully submit that Bene and Nelson, alone or in combination, fail to disclose, teach, or suggest at least the recitations discussed above with respect to independent Claims 1 and 4. For example, Bene and Nelson, alone or in combination, fail to disclose, teach, or suggest an implant that is configured to extend between the anterior chamber and Schlemm's canal of the eye. Applicants respectfully submit that Claims 3, 6–8, and 11 are patentable over the cited references and respectfully request withdrawal of the § 103 rejections of Claims 3, 6–8, and 11.

CONCLUSION

Applicants respectfully submit that the claims are in condition for allowance and have made a good faith effort to respond to the outstanding Office Action. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is cordially invited to contact Applicants' attorney, at the telephone number below, to resolve any such issue promptly.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the cited references show or teach, even if not expressly discussed herein. For purposes of this response, we have treated the cited references as prior art, but Applicants respectfully reserve the right to later challenge whether the cited references are prior art. Although changes to the claims have been made, no acquiescence or estoppel is or should be implied thereby; such amendments are made only to expedite prosecution of the present application and are without prejudice to the presentation or assertion, in the future, of claims relating to the same or similar subject matter. Applicants have

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not presented arguments concerning whether the applied references can be properly combined in view of the clearly missing elements noted above, and Applicants reserve the right to later contest whether a proper motivation and suggestion exists to combine these references.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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